

#### § 1.401(m)-4

#### 26 CFR Ch. I (4-1-10 Edition)

the plan providing for matching contributions must be eligible under the same conditions under the other defined contribution plan and the plan to which the contributions are made must have the same plan year as the plan providing for matching contributions.

(5) *Contributions used only once.* Safe harbor matching or nonelective contributions cannot be used to satisfy the requirements of this section with respect to more than one plan.

(6) *Plan must satisfy ACP with respect to employee contributions.* If the plan provides for employee contributions, in addition to satisfying the requirements of this section, it must also satisfy the ACP test of § 1.401(m)-2. See § 1.401(m)-2(a)(5)(iv) for special rules under which the ACP test is permitted to be performed disregarding some or all matching when this section is satisfied with respect to the matching contributions.

[T.D. 9169, 69 FR 78184, Dec. 29, 2004, as amended by T.D. 9447, 74 FR 8211, Feb. 24, 2009]

#### § 1.401(m)-4 Special rules for mergers, acquisitions and similar events. [Reserved]

#### § 1.401(m)-5 Definitions.

Unless otherwise provided, the definitions of this section govern for purposes of section 401(m) and the regulations thereunder.

*Actual contribution percentage (ACP).* *Actual contribution percentage* or *ACP* means the ACP of the group of eligible employees as defined in § 1.401(m)-2(a)(2)(i).

*Actual contribution percentage (ACP) test.* *Actual contribution percentage test* or *ACP test* means the test described in § 1.401(m)-2(a)(1).

*Actual contribution ratio (ACR).* *Actual contribution ratio* or *ACR* means the ACR of an eligible employee as defined in § 1.401(m)-2(a)(3).

*Actual deferral percentage (ADP) test.* *Actual deferral percentage test* or *ADP test* means the test described in § 1.401(k)-2(a)(1).

*Compensation.* *Compensation* means compensation as defined in section 414(s) and § 1.414(s)-1. The period used to determine an employee's compensation for a plan year must be either the plan year or the calendar year ending

within the plan year. Whichever period is selected must be applied uniformly to determine the compensation of every eligible employee under the plan for that plan year. A plan may, however, limit the period taken into account under either method to that portion of the plan year or calendar year in which the employee was an eligible employee, provided that this limit is applied uniformly to all eligible employees under the plan for the plan year. See also section 401(a)(17) and § 1.401(a)(17)-1(c)(1). For this purpose, in case of an HCE whose ACR is determined under § 1.401(m)-2(a)(3)(ii), period of participation includes periods under another plan for which matching contributions or employee contributions are aggregated under § 1.401(m)-2(a)(3)(ii).

*Current year testing method.* *Current year testing method* means the testing method under which the applicable year is the current plan year, as described in § 1.401(k)-2(a)(2)(ii) or 1.401(m)-2(a)(2)(ii).

*Designated Roth contributions.* *Designated Roth contributions* means designated Roth contributions as defined in § 1.401(k)-1(f)(1).

*Elective contributions.* *Elective contributions* means elective contributions as defined in § 1.401(k)-6.

*Elective deferrals.* *Elective deferrals* means elective deferrals described in section 402(g)(3).

*Eligible employee—(1) General rule.* *Eligible employee* means an employee who is directly or indirectly eligible to make an employee contribution or to receive an allocation of matching contributions (including matching contributions derived from forfeitures) under the plan for all or a portion of the plan year. For example, if an employee must perform purely ministerial or mechanical acts (e.g., formal application for participation or consent to payroll withholding) in order to be eligible to make an employee contribution for a plan year, the employee is an eligible employee for the plan year without regard to whether the employee performs these acts.

(2) *Conditions on eligibility.* An employee who is unable to make employee contributions or to receive an allocation of matching contributions because